

REMARKS

In the Office Action, the Examiner objected to the specification; rejected claims 27-35, 38, and 39 under 35 U.S.C. § 101; and rejected claims 1-9, 12-22, 25-35, 38, and 39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,751,190 B1 to Swallow ("Swallow") in view of U.S. Patent No. 7,000,121 B2 to Jarosz ("Jarosz").

By this Reply, Applicant has amended claims 27-35, 38, and 39. Claims 1-9, 12-22, 25-35, 38, and 39 are currently pending, with claims 1, 14, and 27 being independent. Claims 10, 11, 23, 24, 36, and 37 have been previously canceled without prejudice or disclaimer. Based on the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration and withdrawal of the objection and the claim rejections.

I. Objection to the Specification

The Examiner objected to the specification because of alleged informalities. The Examiner asserted that "[t]here is insufficient antecedent basis for ['storage mediums' in paragraph (045)] in the specification." Office Action at 2. Applicant respectfully disagrees. Applicant submits that sufficient antecedent basis can be found in the specification, for example, at paragraphs [038] and [040]. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the objection to the specification.

II. The Rejection of Claims 27-35, 38, and 39 under 35 U.S.C. §101

The Examiner rejected claims 27-35, 38, and 39 under 35 U.S.C. §101 purportedly because the claims are directed to a signal embodied in a carrier wave, and

a signal does not fall within one of the statutory classes of § 101. Office Action at 2-3.

Although Applicant respectfully disagrees, Applicant, in an effort to advance prosecution, has amended claims 27-35, 38, and 39 to recite “computer-readable storage device.” Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 101 rejection of claims 27-35, 38, and 39.

III. The Rejection of Claims 1-9, 12-22, 25, 35, 38, and 39 under 35 U.S.C. §103(a) Based on Swallow and Jarosz

The Examiner rejected claims 1-9, 12-22, 25, 35, 38, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Swallow in view of Jarosz. Applicant respectfully traverses the rejection.

“The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements.” M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” M.P.E.P. § 2143.01(III) (emphasis in original). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I) (emphases in original).

“[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). “Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill.” M.P.E.P. § 2141(II).

Applicant respectfully submits that the § 103(a) rejection of claims 1-9, 12-22, 25, 35, 38, and 39 was improper because the Examiner failed to ascertain the differences between the claimed inventions and the prior art and resolve the level of ordinary skill in the pertinent art, as required by *Graham v. John Deere Co.* and M.P.E.P. § 2141. Instead, the Examiner merely stated what the cited references purportedly teach and that it would have been obvious to a person having ordinary skill in the art to modify the method disclosed by Swallow to include alleged teachings of Jarosz without resolving the level of ordinary skill in the art. Office Action at 4.

Furthermore, even if the *Graham* factual inquiries had been resolved, a *prima facie* case of obviousness has not been established with respect to claims 1-9, 12-22, 25, 35, 38, and 39. For example, independent claim 1 recites, among other things “[a] network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node,” “transmitting over the network an indication from the first node to the

second node that the third node has failed,” and “reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between the fourth node and the first node after the indication has been received by the second node.” Swallow and Jaros, taken alone or in combination, fail to teach or suggest the recited elements.

Instead, Swallow discloses “a network . . . including a transmit endpoint . . . , a receive endpoint . . . and [four] intermediate nodes [connected between the transmit endpoint and the receive endpoint].” Swallow, col. 3, lines 9-14; FIG. 1. As shown in FIG. 1 of Swallow, the network of Swallow differs from “a network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node,” as recited in independent claim 1. In fact, nowhere does Swallow even teach or suggest a gateway comprising at least two nodes. Neither the endpoint nor the intermediate node of Swallow corresponds to a gateway comprising at least two node because neither the endpoint nor the intermediate node of Swallow comprises at least two nodes. In addition, Swallow does not teach any grouping of the endpoints and/or intermediate nodes to even suggest an entity comprising at least two intermediate nodes. Because of this absence of a gateway comprising at least two nodes, the Examiner correctly observed that Swallow does not “teach transmitting over a network **an indication from a first node [of a first gateway] to a second node [of a second gateway] that a third node [of the first gateway] has failed.**” Office Action at 4 (emphasis added). Further, as Swallow does not teach or suggest a gateway comprising at least two nodes, Swallow also fails to teach or suggest “reconfiguring a first data, the first data initially

configured to be transmitted over the network between the second node [of the second gateway] and the third node [of the first gateway], to be transmitted over the network between the fourth node [of the second gateway] and the first node [of the first gateway] after the indication has been received by the second node,” as recited in independent claim 1.

Jarosz fails to cure these deficiencies of Swallow. Jarosz discloses transmitting a heartbeat packet, which is merely a failure detection signal. Jarosz, col. 3, lines 52-64. Transmission of a heartbeat packet, by itself, does not indicate that a node has failed. Id. Only when a node fails to respond to a heartbeat signal within a predetermined time, the failure of the node is detected. Id. Because no response signal indicates the failure of the node, there is no transmission of an indication of failure in the system of Jarosz. Id. Thus, Jarosz fails to teach or suggest “transmitting over a network an indication that . . . [a] node has failed,” as recited in independent claim 1.

In addition, even assuming *arguendo* that a heartbeat packet constitutes an indication that a node has failed, which Applicant disputes, Jarosz discloses transmitting a heartbeat packet from a client to a gateway in a client-gateway connection. Jarosz, col. 3, lines 52-64. Nowhere does Jarosz teach or suggest transmitting a heartbeat packet from a node of one gateway to a node of another gateway. Thus, even under the assumption, Jarosz fails to teach or suggest “transmitting over [a] network an indication from [a] first node [of a first gateway] to [a] second node [of a second gateway] that [a] third node [of the first gateway] has failed,” as recited in independent claim 1.

Moreover, Jarosz discloses selecting another third node for use when there is no answer to a heartbeat packet. Jarosz, Abstract, and col. 3, lines 52-64. The first node client that is originally connected to the failed third node simply connects to a new third node when failure is detected. Id. Thus, Jarosz teaches at most selecting another node in one end but not in both ends, and thus fails to teach or suggest “reconfiguring a first data, the first data initially configured to be transmitted over the network **between the second node [of the second gateway] and the third node [of the first gateway]**, to be transmitted over the network **between [a] fourth node [of the second gateway] and the first node [of the first gateway]** after the indication has been received by the second node,” as recited in independent claim 1 (emphasis added).

In view of the mischaracterization of the Swallow and Jarosz references noted above, the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claim 1. Moreover, there is no motivation for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Thus, the Examiner has failed to clearly articulate a reason why claim 1 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 1 and the rejection under 35 U.S.C. § 103(a) must be withdrawn.

Independent claims 14 and 27, although of different scope, recite features that are similar to the features recited in independent claim 1. For reasons at least similar to the reasons set forth above with respect to independent claim 1, a *prima facie* case of obviousness has not been established with respect to independent claims 14 and 27.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of independent claims 14 and 27 based on Swallow and Jarosz.

Dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 are allowable at least by virtue of their dependence from an allowable independent claim. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 based on Swallow and Jarosz.

IV. Conclusion

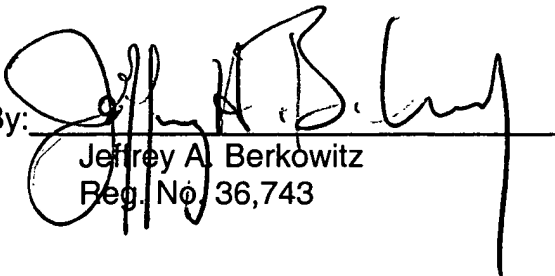
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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